

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ITV DIRECT, INC., v. HEALTHY SOLUTIONS, LLC, et al.,	Plaintiff, Defendants.))))))))))))))	CIVIL ACTION NO. 04-CV-10421-JLT
RELATED CASES					

PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

The Plaintiff, ITV Direct, Inc. (“ITV”), pursuant to Federal Rule of Civil Procedure 15(a), hereby moves the Court to grant it leave to file a First Amended Complaint. The proposed Amended Complaint is attached hereto as Exhibit A.

As grounds for this motion, the Plaintiff states that it has recently discovered that the representations that the defendants made to it concerning defendant Alejandro Guerrero’s (“Guerrero”) status as a doctor, and about the scientific support for the health claims they made about the Supreme Greens with MSM product (the “Product”), were entirely false. Based on these false representations, the defendants induced ITV into entering into the Distribution Agreement at issue in this case, and into expending millions of dollars to market and distribute the Product.

ITV was alerted to the fact that the defendants may have made such false representations after the Federal Trade Commission contacted ITV on April 7, 2004 in connection with the Guerrero/Supreme Greens with MSM infomercial produced by the Plaintiff, and other marketing materials featuring Guerrero. The FTC notified ITV that it was conducting an investigation of

the claims made by Guerrero concerning the health and curative benefits of the product. (See Affidavit of Robert Maihos, ¶10, attached to Plaintiff's Opposition to Defendants' Motion for Preliminary Injunction.) The FDA also notified ITV that it has concerns regarding the labeling of the Supreme Greens with MSM product and the health claims made by Guerrero. (See Affidavit of Christopher Robertson, ¶6, attached to Plaintiff's opposition to Defendants' Motion for Preliminary Injunction.) In light of the FTC and FDA investigations, each agency has indicated that Guerrero is not a medical doctor and has not been awarded a doctorate by any university, as the defendants represented to ITV. (*Id.*; Maihos Aff., ¶10.)

It is now clear to ITV that the defendants induced it into entering the Distribution Agreement based on false claims regarding the Product's health benefits, clinical testing, and Guerrero's credentials. As a result of this fraud, the Plaintiff could be exposed to an action by the FTC that could shut down its business. (Maihos Aff., ¶10.) Pursuant to the Distribution Agreement, Plaintiff is entitled to indemnification from the Defendants for any penalties or fines that may be assessed against ITV by the FTC or FDA as a result of the Defendants' fraudulent representations.

Thus, the Plaintiff now seeks leave to amend its complaint to assert additional claims against the Defendants arising out of their fraudulent representations and indemnification obligations. These amendments clearly are not futile amendments. Because this case was recently filed and the parties have not even started taking discovery, there will be no prejudice to the defendants if this motion is allowed. Leave to amend "shall be freely given when justice so requires" after a responsive pleading has been filed, and this Court should grant the Plaintiff's motion for leave to file a first amended complaint. Fed. R. Civ. P. 15(a); *See Foman v. Davis*,

371 U.S. 178, 182 (1962) (leave to amend should be freely granted if there is no bad faith by the moving party, unwarranted delay, or undue prejudice to the opposing party).

WHEREFORE, the Plaintiff requests that this Court grant its motion and accept the Amended Complaint for filing.

Respectfully submitted,

ITV DIRECT, INC.
By their attorney(s),

/s/ Peter S. Brooks

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